STATE OF MICHIGAN

COURT OF APPEALS

JARED M. SCHUBINER and SONDRA SCHUBINER,

Plaintiffs-Appellants,

v

SOMMERS SCHWARTZ SILVER & SCHWARTZ, P.C., and ANDREW KOCHANOWSKI,

Defendants-Appellees.

UNPUBLISHED
May 3, 2005

No. 251935
Oakland Circuit Court
LC No. 2002-046148-NM

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

In this legal malpractice action, plaintiffs appeal as of right from the trial court's order granting defendants summary disposition based on the statute of limitations, MCR 2.116(C)(7). We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs retained defendants to represent them in an underlying lawsuit to collect commissions for the sale of securities. That matter was submitted to arbitration and plaintiff Jared Schubiner was awarded $137,852.02 in November 2000. Plaintiffs filed this malpractice action on December 17, 2002. Defendants moved for summary disposition, arguing that plaintiffs' action was barred by the two-year statute of limitations. MCL 600.5838(1). The trial court concluded that any malpractice claim began accruing in November 2000, when the arbitration matter concluded, and therefore granted defendants' motion.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court granted defendants' motion under MCR 2.116(C)(7). As this Court stated in *Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995):

> A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may (but is not required to) file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentation is submitted, the court must consider it. MCR 2.116(G)(5). If no such documentation is submitted, the court must review the plaintiff's complaint,

> accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff.

"If the pleadings or other documentary evidence reveal no genuine issues of material fact, the court must decide as a matter of law whether the claim is statutorily barred." *Holmes v Michigan Capital Medical Center*, 242 Mich App 703, 706; 620 NW2d 319 (2000).

It is undisputed that plaintiffs' legal malpractice action is governed by a two-year statute of limitations. See MCL 600.5805(6).[1] Defendants argue that any claim for malpractice began accruing on either November 20, 2000, when the arbitration matter concluded, or December 15, 2000, when defendants notified plaintiffs by letter that they should retain new counsel to resolve a dispute that arose over the distribution of the arbitration proceeds.

MCL 600.5838(1) provides as follows:

> (1) Except as otherwise provided in section 5838a [MCL 600.5838a], a claim based on the malpractice of a person who is, or holds himself or herself out to be, a member of a state licensed profession accrues at the time that person discontinues serving the plaintiff in a professional or pseudoprofessional capacity as to the matters out of which the claim for malpractice arose, regardless of the time the plaintiff discovers or otherwise has knowledge of the claim.

In *Maddox v Burlingame*, 205 Mich App 446, 450; 517 NW2d 816 (1994), this Court summarized when the attorney-client relationship ends:

> A lawyer discontinues serving a client when relieved of the obligation by the client or the court, *Stroud v Ward*, 169 Mich App 1, 6; 425 NW2d 490 (1988), or upon completion of a specific legal service that the lawyer was retained to perform. *Chapman v Sullivan*, 161 Mich App 558, 561-562; 411 NW2d 754 (1987). Retention of an alternative attorney effectively terminates the attorney-client relationship between the defendant and the client. *Stroud*, *supra* at 4.

Although defendants only agreed to represent plaintiffs in the underlying arbitration matter, and that matter concluded in November 2000, the parties' retainer agreement gave defendants the right to process any check received in settlement of the matter through its client trust account. Plaintiffs presented evidence that defendants continued to represent them in connection with the distribution of the arbitration proceeds and that plaintiffs did not receive their share of the arbitration proceeds until December 22, 2000. Defendants do not dispute this date, but argue that any involvement by them in resolving a fee dispute associated with the distribution of the arbitration proceeds was a separate matter and, therefore, is not relevant to a determination of when any claim for malpractice associated with the arbitration matter began accruing. We disagree.

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[1] Formerly MCL 600.5805(5).

Although defendants advised plaintiffs by letter, dated December 15, 2000, to retain new counsel to resolve the fee dispute, plaintiffs presented evidence that defendants continued to represent them in the negotiations to resolve the dispute. More significantly, however, because defendants were responsible for processing and distributing the arbitration proceeds, defendants did not discontinue serving plaintiffs in a professional capacity as to the matter out of which the claim for malpractice arose (i.e., the arbitration matter) until December 22, 2000. Cf. *Chapman v Sullivan*, 161 Mich App 558, 561-562; 411 NW2d 754 (1987) (where the defendant was retained to represent the plaintiff to perform a specific legal service, the defendant was under no obligation to the plaintiff once the file on the original matter was closed and all involved believed that the matter was completed). Because this action was filed on December 17, 2002, it was timely under the two-year statute of limitations. The trial court erred in granting defendants' motion for summary disposition.

Reversed. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Kurtis T. Wilder